HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.25316 of 2006

Between:

Mohd. Khaja and 11 others

… Petitioners

And

The State of A.P. rep. by its Secretary, Excise Department, Secretariat, Hyderabad and four others.

… Respondents

:: ORDER::

Counsel for the Petitioners: Shri M. Rama Rao

Counsel for respondent Nos.1 to 3: Government Pleader for Prohibition and Excise

Counsel for respondent Nos.4 and 5: Shri O. Manohar Reddy

March 30, 2007

-
-
-
-

Per G.S. Singhvi, CJ

Having failed to persuade the authorities of Prohibition and Excise Department not to issue licence for opening bar in Padmanagar area, Old Malakpet, Hyderabad, the petitioners have filed this petition for cancellation of licence on the basis of which respondent No.4 has started bar at premises bearing No.16-9-38 under the name and style of Vaishnavi Bar and Restaurant.

The petitioners are residents of Padmanagar. Prior to establishment of the bar in question, a toddy shop was being run at the site. According to the petitioners, the toddy shop was closed in view of the protests lodged by them. On June 14, 2006, the local Member of the Legislative Assembly, Shri Malreddy Ranga Reddy represented to District Collector, Hyderabad against the proposed opening of bar at the site. The residents of the area made representation dated 15-6-2006 to Excise Superintendent, Hyderabad that there is a possibility of reopening of sandi compound and if that is allowed, peaceful life of the law abiding citizens will be disturbed and education of the children will be adversely affected. The local Member of Parliament Shri Asaduddin Owaisi also wrote letter dated 6-11-2006 to the departmental authorities against the opening of bar.

It is borne out from the record that petitioner No.1 and some others filed Writ Petition No.14991 of 2006 for restraining respondent Nos.1 to 3 from granting licence under amended Rule 29 (3) of Andhra Pradesh Indian and Foreign Liquor Rules, 1970 for opening a

bar in Padmanagar Colony by contending that location of the proposed bar is in a residential area and is 20 ft. away from the temple and 10 ft. away from the dargah. The same was dismissed by the learned Single Judge vide her order dated 1-9-2006, the relevant extracts of which are extracted below:

"This writ petition is filed with the following prayer :

> "It is therefore prayed that the Hon'ble Court may be pleased to issue a writ, order or orders, particularly one in the nature of Writ of Mandamus declaring the action of the respondents in seeking a licence under A.P. Indian Liquor & Foreign Liquor Rules, 1970 for opening a liquor bar at Padmanagar Colony, Old Malakpet, Hyderabad contrary to the rules as the said location is predominantly in a residential location and 20 feet away from temple and 10 feet away from dargah is arbitrary and illegal or to pass any other order or orders appropriate in the case."

In the affidavit filed in support of the writ petition, it is alleged that the impugned action of the respondents is contrary to Rule 29 of the A.P. Indian Liquor & Foreign Liquor Rues, 1970.

The Rules which are relied upon by the petitioners were superseded long back and they are no longer in force. Hence, the relief as prayed for cannot be granted and I am not inclined to entertain this writ petition.

Accordingly, the Writ Petition is dismissed. No costs.

However, liberty is granted to the petitioners to file fresh writ petition, if so advised."

Writ Petition No.23057 of 2006 filed by petitioner No.1 and others for grant of relief similar to the one prayed for in Writ Petition No.14991 of 2006, which was subsequently amended for restraining respondent Nos.l to 3 from granting licence under Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence)

Rules, 2005 (for short, 'the 2005 Rules') was dismissed as withdrawn.

After dismissal of the writ petitions filed by the residents, the competent authority of Prohibition and Excise Department granted 2B licence to respondent No.4 for running bar under the name and style "Vaishnavi Bar and Restaurant Janata Bar", Padmanagar, Old Malakpet, Hyderabad and he established the bar and restaurant at the premises in question.

The petitioners have challenged the grant of licence to respondent No.4 mainly on the ground of violation of Rule 6 (1)(iii) of the 2005 Rules. In the affidavit filed by petitioner No.1 – Mohd. Khaja, it has been averred that Padmanagar area is a predominantly residential area and, as such, no bar could be opened in that area and the authorities of the Excise Department committed a serious illegality by granting 2B licence to respondent No.4 for putting up bar at the premises in question. It has been further averred that there is no commercial activity in the locality and on account of opening of bar, the lives of the residents have been greatly disturbed.

In the counter-affidavit filed by him on behalf of the official respondents, Shri T. Prasad, Deputy Commissioner of Prohibition and Excise, Hyderabad has defended the opening of bar at the premises in question by asserting that the same is facing main road from Chaderghat to Malakpet; that there are shops adjacent to the railway track passing through Malakpet and the bar is not located in the residential area. The deponent has also justified the opening of bar by asserting that this would reduce the sale of ID liquor in the area. According to Shri Prasad, licence was granted to respondent No.4 after making proper enquiry and considering the representations made by the Members of Parliament and Legislative Assembly.

Along with his affidavit, Shri Prasad has annexed reports dated 20-10-2006 and 21-11-2006 sent by Assistant Prohibition and Excise Superintendent, Secunderabad and Inspector of Police, Chaderghat, Hyderabad. He has also annexed a statement of the cases registered against Smt.Naseem Bee and Smt. Meera Bee, who are said to be engaged in the sale of ID liquor.

In his affidavit, respondent No.4 has questioned the bona fides of the petitioners by alleging that they have been put up by those engaged in the sale of ID liquor. He has further averred that the petitioners have encroached the land belonging to his vendor. It is also the case of respondent No.4 that he was running a toddy shop at the premises for 30 years till the licence was cancelled about two years ago. According to him, the sandi compound was closed in furtherance of the policy decision taken by the government not to renew toddy licences in the city area.

Petitioner No.1 has filed rejoinder affidavits to both the counters and reiterated his plea that establishing of bar at the premises in question is contrary to the mandate of Rule 6 (1)(iii) of the 2005 Rules because it is situated within 500 meters of predominantly residential area and is not located on the main road used for shopping purposes.

By an order dated 22-2-2007, the Court appointed Shri Y.Vivekanand, advocate as Commissioner and directed him to inspect the site and submit report within two weeks. Accordingly, the Court Commissioner issued notices to the advocates for the parties, inspected the site on 5-3-2007 and submitted report dated 7-3-2007, which reads as under:

> "In pursuance of the order of the Hon'ble High Court dated 22-2-2007, and the Warrant served on me to inspect the site in dispute and submit a Report, I had issued notices to the counsel for petitioner and the counsel for fourth and fifth

respondents proposing to inspect the land on 5-3-2007 at 3.30 p.m.

2. I went to the site at the appointed time and both the counsel had also sent their representatives. The counsel for the petitioner had submitted a Work Memo and the counsel for respondent Nos.4 and 5 did not file any Work Memo. The fifth respondent viz., Vaishnavi Bar & Restaurant Janata Bar is located at a distance of 262 feet from the main road going from Chaderghat to Dilsukhnagar. The width of the road leading to the fifth respondent, Vaishnavi Bar & Restaurant Janata Bar is about 18 feet. Right from the entrance to the lane from the main road, there are two shops on the left side of the road belonging to Mohd. Rahman, Mohd. Qureshi and a small pan shop. As such, there are only two shops and one pan shop on the left side of the road. The shops are run by the said persons and they are also living in them. On the right of the road, there is an open drain, Nala, going into river Musi and as such there are no shops on the right side of the road. The road breaks into a fork and the fifth respondent, Vaishnavi Bar & Restaurant Janata Bar is in the center. The left side of the road leads to New Padmanagar and Shankarnagar and the right lane is a dead end. On the left road, there is an open shed reputed to be belonging to the landlord of the fourth respondent. By the side of the said shop, there is a house belonging to Syed Vaheed and adjacent to the houses, there is a temple. On the right side of the fifth respondent Vaishnavi Bar & Restaurantt Janata Bar, there are only houses and there are no commercial shops.

3. In fact, the entire area is predominantly a residential area except for the two shops near the main road. On the road, at the right side of the fifth respondent Vaishnavi Bar & Restaurant Janata Bar, there is a Chilla and a flag of the local community has been affixed. Even behind the fifth respondent, Vaishnavi Bar & Restaurant Janata Bar, there are only houses belonging to Sri Durga Rao and his brothers. These are houses abutting the back side wall of the Vaishnavi Bar & Restaurant Janata Bar.

4. As such, in my opinion, the entire area is predominantly a residential area.

5. I am returning herewith the Warrant duly executed.

6. My fees, as fixed by this Hon'ble Court, has been paid by the party."

Copies of the report have been made available to the learned counsel for the parties. Neither of them has filed any objection.

Shri M. Rama Rao invited our attention to the contents of the affidavits of petitioner No.1, letters dated 15-6-2006 and 6-11-2006 written by the local Member of Legislative Assembly Shri Malreddy Ranga Reddy and Member of Parliament Shri Asaduddin Owaisi and report of the Court Commissioner and argued that the licence granted to respondent No.4 for establishing bar at the premises in question should be quashed because the bar is located in the midst of the residential colony and in view of the prohibition contained in Rule 6(1)(iii), bar cannot be located within 500 meters of predominantly residential area. He pointed out that as per the report of the Court Commissioner, the bar is located about a distance of 262 feet from the main road going from Chaderghat to Dilsukhnagar and the width of the road leading to the bar and restaurant is 18 feet and there are only three shops on the left side of the road and argued that the official respondents committed a serious illegality by entertaining the application of respondent No.4 and issuing 2B licence to him.

Learned Government Pleader for Prohibition and Excise fairly conceded that as per the report of the Court Commissioner, the location of the bar is contrary to Rule 6 (1)(iii) of the 2005 Rules, but argued that the decision of the department to grant licence to respondent No.4 should not be nullified because the writ petition has been filed at the instance of those who are engaged in the sale of illicit liquor. Learned Government Pleader emphasized that the lack

of bona fides of the petitioners is evinced from the fact that they did not seek closure of the toddy shop, which was running for last 30 years.

Shri O. Manohar Reddy, learned counsel for respondent Nos.4 and 5 questioned the locus and bona fides of the petitioners by contending that they have been put up by the persons engaged in illicit sale of liquor. Shri Reddy emphasized that respondent No.4 has been running toddy shop for last 30 years without any objection and argued that the sudden awakening of the residents of the area against running of the bar should be viewed by the Court with suspicion. He referred to the reports dated 20-10-2006 and 21-11-2006 submitted by Assistant Prohibition and Excise Superintendent, Secunderabad and Inspector of Police, Chaderghat Police Station to show that the bar is located on the main road and not in the thick of the residential area.

We have given serious thought to the entire matter.

Rule 6 (1) of the 2005 Rules, which contains restriction of grant of licence reads as under:

6.Restrictions on the grant of licence:

1) A licence in Form-2B shall not be granted

i) Unless the premises has:

a) a minimum plinth area of 100 sq. meters.

b) a separate bar room and restaurant within the licensed premises for consumption.

c) Sanitary equipment like wash basin, water closet.

d) Facility for cooking and serving complete meals of good quality to the consumers as licenced by local authority.

e) Air conditioning or Air cooling facility where liquor is consumed

f) Adequate vehicle parking arrangement.

ii) Within 100 meters from educational institution

recognized by the government, places for public worship such as temples registered by the Endowments Department, Mosques registered with the Wakf Board, Churches and Hospitals.

Provided that in the limits of Municipal Corporations and within the belt area of 5 kms. of the periphery of Municipal Corporations, the distance restriction mentioned above shall be 50 meters.

iii) Within 500 meters of predominantly residential area but licenses may however be sanctioned if the proposed premises is located on the main road used for shopping purposes.

iv) Provided that the restrictions in clauses (i) to (iii) shall not be applicable to Star Hotels (3 Star and above) certified by the Tourism Department of the State or Central Government.

i) within 50 meters of a Highway.

ii) Unless the applicant produces the permission or the no objection certificate from the local authority concerned for sale of liquor at the premises by the applicant.

iii) Unless the applicant produces the lease deed on a stamp paper for the proposed licensed premises from the owner of the premises.

A bare reading of sub-clause (iii) of Rule 6 (1) makes it clear that licence in Form 2B cannot be granted for location of a bar within 500 meters of a predominantly residential area. This is subject to an exception that if the premises is located on the main road and is used for shopping purposes, then the licence can be granted.

In the light of the above, it is to be seen whether the bar established by respondent No.4 under the name and style of respondent No.5 is within 500 meters of predominantly residential area and the premises in question is not located on the main road

used for shopping purposes.

While the petitioners have alleged that the bar is located in the midst of residential area, the official as well as unofficial respondents denied the same. The latter have also projected the sale of illicit liquor as the cause for grant of licence for establishing bar.

Whether or not Smt.Meera Bee and Naseem Bee, who are residents of the area, are engaged in the sale of illicit liquor is not a matter on which any pronouncement can be made in the proceedings of this case because neither of them is a party to the writ petition nor the cases against them are subject matter of challenge in this writ petition. Therefore, the only issue, which requires adjudication is whether the premises for which 2B licence has been issued to respondent No.4 are located in a predominantly residential area.

A reading of the Court Commissioner's report, the correctness of which has not been questioned by respondent Nos.2 to 4, shows that the premises at which the bar has been established in a predominantly residential area and is not situated on the main road. The distance between the main road and the premises is about 262 feet and there are only three shops in the 18 feet wide lane in which the bar is situated. It is, thus, clear that the licence for opening the bar has been granted to respondent No.4 in violation of the prohibition contained in Rule 6 (1)(iii) of the 2005 Rules and the reports submitted by the subordinate officers of the Excise Department, which facilitated grant of licence to respondent No.4, were false and misleading.

On the basis of the above discussion, we hold that grant of 2B licence to respondent No.4 is vitiated due to violation of
Rule 6 (1)(iii) of the 2005 Rules.

The challenge to the locus standi of the petitioners to seek

intervention of this Court is liable to be negatived because the respondents have not produced any evidence to show that they are not residents of the area and are not effected by running of the bar. The plea of the respondents that the petitioners have been instigated to file this petition by those engaged in the sale of illicit liquor has also remained unsubstantiated. Therefore, we do not find any valid ground or justification to non-suit the petitioners by holding that they have not approached the Court with clean hands.

In the result, the writ petition is allowed. Respondent No.4 is directed to close the bar and restaurant being run at the present premises with effect from 30-4-2007. If respondent No.4 wishes to shift the bar and restaurant to some other site, then the application made by them shall be considered and disposed of by the competent authority within a period of next seven days after complying with the necessary statutory requirement. If respondent No.4 wants to close the business before the expiry of term of licence i.e. 30-6-2007 and want to apply for refund of proportionate licence fee, then he shall be free to do so and the competent authority shall decide his application in accordance with law. However, this part of the direction shall not be construed as a mandate of the Court for refund of licence fee to respondent No.4.

G.S. SINGHVI, CJ

March 30, 2007

C.V. NAGARJUNA REDDY, J

Note:

The Court Officer is directed to give attested copy of this order to the counsel for the parties who may come forward to avail this facility.

(By order)

SVS